

CALIFORNIA FAIR POLITICAL PRACTICES COMMISSION
MINUTES OF THE MEETING, Public Session

Friday, May 5, 2000

Call to order: Chairman Karen Getman called the monthly meeting of the Fair Political Practices Commission (FPPC) to order at 9:40 a.m. at 428 J Street, Eighth Floor, Sacramento, California. In addition to Chairman Getman, Commissioners Bill Deaver, Kathleen Makel, Carol Scott and Gordana Swanson were present.

Item #1. Approval of the Minutes of the April 7, 2000 Commission Meeting.

The minutes of the April 7th, 2000, Commission meeting were distributed to the Commission and made available to the public. There being no objection, the minutes were approved.

Item #2. Public Comment.

There was no public comment.

Item #3. Consideration of Executive Director's recommendation to waive time limits of Regulation 18322 (b), (c) in the matter of *In re Galligan* (No. O-00-45) . (Regulations 18320 and 18322(f).)

Wayne Strumpfer, Executive Director, explained his recommendation to waive the time frame requirements in Regulation 18322. He noted that he had granted an opinion request from Burlingame City Councilman Joe Galligan.

The request, he stated, involved a governmental action that may occur before the next Commission meeting and therefore a Commission decision should not wait. The Burlingame City Council expected to vote on the issue on June 5th, 2000, and Councilman Galligan may take part in discussions related to the issues prior to that. Mr. Strumpfer also noted that the time schedule proposed in his memo had been followed, and it allowed public comment with the same deadlines as all other agenda items. Since it appeared to have caused no problems to the public by shortening the time deadlines by just a few days, he recommended that the Commission vote to waive the time deadlines required in Regulation 18322.

Chairman Getman explained that, if the Commission chose to waive the time deadlines, voting would take place at this meeting, then staff would draft an opinion and present it at the June Commission hearing for formal adoption.

Commissioner Swanson motioned that the Commission waive the time deadlines in Regulation 18322(b) & (c). The motion was seconded by Commissioner Makel. There being no objection, the motion carried.

Item #4. Consideration of the Opinion Request in the Matter of *In re Galligan* (No. O-00-45).

FPPC Staff Counsel Mark Krausse presented the request by Burlingame City Councilmember Joe Galligan for an opinion to determine whether he would be allowed to participate in a council decision regarding whether or not to certify an EIR for a project in which Councilmember Galligan has an indirect economic interest.

Mr. Krausse explained that Councilmember Galligan has stated that the loan held by Mid-Peninsula Bank, in which he has a financial interest, will be paid off if the project is approved. He noted that past advice given by the Commission involved foreclosure and that this case is not likely to involve foreclosure. Mr. Krausse added that there are no advice letters treating property as an asset of a bank when it is held under a deed of trust, and that there is no conflict under Regulation 18705.1(b)(2)(c) because it is the loan that is the bank's asset, and the value of the loan would not be affected by this decision.

Chairman Getman noted that the Commission may need to decide whether it should be looking at the loan, the deed of trust, or the property that secures the deed of trust, in determining the material financial effect. The Commission could, she noted, assume the loan is the asset, but make it clear in the opinion that the Commission is not deciding that point because it is to be considered as part of Pase 2, Project A, in June.

Commissioner Scott noted that there is no evidence that the loan will be paid off other than a statement by Councilmember Galligan.

Mr. Krausse pointed out that a subsequent letter from the borrower confirmed that the loan will be paid off, but did not state when it would be paid off. He noted that the loan due date is January 17, and that staff believed it to be substantially likely that it will be off early.

Commissioner Scott cautioned that the Commission should not make too many assumptions and noted that the letter states that they intended to pay the loan, but that there were a number of alternatives.

Commissioner Makel noted that the Commission is not a fact-finding body and as such must assume that the information they have been given is true. She added that in the event that an opinion is rendered and it is later learned that the information originally given was not true, the opinion would not apply.

Commissioner Scott stated that the Commission should not make the assumption that the loan will be repaid.

Mr. Krausse stated that the potential conflict pertains to a loss of gross revenues of \$150,000.00 or more. He noted Councilmember Galligan's assertion that under any scenario, a payoff of the loan will occur within 108 days, and that the financial effect will be the same in any case. He

explained that under the “simple causation” definition, a public official could claim that it was not the decision that caused the financial effect.

“Simple causation” he explained, is a “bright line” rule which is easy to enforce and easy to understand. Applying “proximate cause” would complicate the process and create enforcement problems. The strongest consideration for “proximate cause” is the appearance that the governmental decision cannot effect the outcome of the economic interest, and that precluding the public official from voting would serve no purpose. Using the “proximate cause” interpretation could limit the disqualifications, he stated, and could be applied to all cases, possibly resulting in the exceptional case driving the rule. He added that the Commission could limit the cases using the “proximate cause” standard for causation to a limited set of cases.

Burlingame Councilmember Joe Galligan explained that as soon as he learned of the possible conflict, he contacted the Burlingame City Attorney to ask whether a conflict existed, and that the City Attorney responded that a conflict did exist. Councilmember Galligan explained that he is a CPA, and that as a CPA he must meet a number of standards to work in California which include ethical and moral responsibilities. He added that the CPA’s have their own conflict of interest standards that include maintaining public confidence, and that he cannot place a client’s interest above the public interest. He explained details of those standards, noting the “realistic possibility” provision, and the “materiality” standard. Councilmember Galligan added that the standards include a quantitative analysis, a qualitative analysis, and then look at the specific circumstances to decide if something is material.

Councilmember Galligan explained that he owns 0.2% of the outstanding shares of the bank, and noted that the bank may earn one hundred fifty-thousand dollars in interest on the loan, but would have earned one hundred thousand dollars in interest on the money even if the money had not been loaned to the developer. He added that his personal profit from that loan would be about two dollars a day. Councilmember Galligan argued that the bank is a three billion-dollar bank, and that one hundred fifty thousand dollars is not material to a bank of that size. The purpose of the loan, he stated, was to acquire the property. Since the construction loan will be for approximately one hundred million dollars, Mid-Peninsula Bank will not be able to make the loan because the most it can lend is twenty-five million dollars. Therefore Mid-Peninsula Bank will be paid off when a new construction loan is made. If the construction project is not approved, the owners of the property will sell the property, and pay off the loan from Mid-Peninsula Bank at that time.

Councilmember Galligan pointed out that the project will approximately double the amount of commercial space in Burlingame and that the voters of Burlingame would want his participation in this decision. He stated that the financial benefit to him is so minor that he did not believe that he had a conflict.

Commissioner Makel noted that the threshold level for conflicts may not have been met if the interest on the loan is compared to the amount of interest that would have been earned if the loan had never been made and the money placed into other investments.

Councilmember Galligan responded that the threshold would be met at some time, depending on when and how the loan is paid off.

Mr. Krausse clarified that the regulators look only at what the loss or gain would be in gross revenue, and that there is no accommodation for offsetting earnings from alternative investments.

Chairman Getman noted the difficulty which could be presented if alternatives for use of the money had to be compared with what was actually done with the money to determine whether the threshold had been met. She noted that it would be very difficult to determine every possible scenario.

Commissioner Scott stated that the reason for the rigid rules was so that the Commission did not have to look at every situation to make the determinations. She also noted that the public perception must be considered. Commissioner Scott stated that Councilmember Galligan did meet the first threshold for a conflict, and that when the Commission has to make the determination it should not be based on Councilmember Galligan's best judgment.

Councilmember Galligan responded to questions from Commissioner Swanson, stating that he had served on the city council for more than two years, that there were five members on the city council, and that it was important to him to vote on this matter because it involved the last large parcel of land in the City of Burlingame to be developed, potentially doubling the amount of commercial space in the city. He agreed that it was a very dynamic issue within his community.

Chairman Getman asked the Commission to decide whether to apply a "simple causation" or "proximate causation" test.

Commissioner Makel stated that a comparative analysis needed to be made.

Mr. Krausse stated that the comparison had to be made based on both a "yes" vote and a "no" vote, and that if any instance created a potential conflict, or if any outcome could trigger a conflict, then a disqualifying conflict of interest existed.

Commissioner Makel questioned how Councilmember Galligan's financial interest influences him to vote one way or another, since the net effect will be the same no matter which way he votes, and referred to Section 81001(b).

Mr. Krausse noted that staff's eight-step analysis does not refer to Section 81001, and therefore does not check to see if there is a potential bias.

Commissioner Makel suggested that, even if a conflict appears to exist by using the eight-step analysis, there really is not a conflict because, in order to be a conflict, a personal interest must serve as an incentive to vote for or against an issue.

Chairman Getman responded that, following the eight-step analysis, it could be decided that it is not substantially likely that this decision will have a material financial effect.

Mr. Krausse noted that Section 87103 states that if the decision, not the public official's participation, will have a material financial effect, the official is disqualified, even though the official cannot change the outcome.

Commissioner Makel responded that, in this case, it does not have an effect because the potential financial gain is the same no matter which way Councilmember Galligan votes. She added that the whole purpose of the conflicts rules is to prevent public officials from being influenced by their own personal interests, and that there is no bias in this case.

Assistant General Counsel Luisa Menchaca noted that even though the material financial effect may be the same no matter which way Councilmember Galligan votes, there is still a potential for bias.

Commissioner Deaver asked whether the Commission had any way of following up after the vote has been made, to verify that the information provided to the Commission was correct, other than a complaint from a member of the public.

Chairman Getman responded that the case could be flagged and watched.

Commissioner Scott noted that it would be difficult to penalize someone after the Commission voted to allow them to participate.

Chairman Getman responded that the question would then become whether the outcome was reasonably foreseeable.

Commissioner Scott noted that in the *Roberti* case, the reasons for a bias were not a part of the issue. The determination in that case was based on the rules, and not the subjective test of how someone could be influenced.

General Counsel Kathy Gnekow referred to Regulation 18700, noting that disqualification requires a "reasonably foreseeable" financial effect on the public official's economic interests, and that Commissioner Makel's position that there is no conflict could be justified under that Regulation. She also noted that under Regulation 18705.1, the Commission would need to determine what is meant by the word "effect."

Commissioner Scott stated that she did not think the Commission should utilize "proximate cause." She also noted that if, by law, the loan had to be paid off, or could not be paid off, the law would control the contingencies, but questioned the advisability of accepting as fact Councilmember Galligan's projections of what will or will not happen.

Ms. Gnekow advised the Commission to state, at the beginning of the opinion, that the Commission is assuming, for the purposes of the opinion, that the factual information presented to the Commission is true. She noted that the Commission cannot be the verifier of the facts, and that, even though an analysis is conducted and staff has determined that Councilmember Galligan's scenario is reasonable, staff does not know whether the projections will occur, nor does staff know that the information presented is accurate.

Commissioner Scott argued that verification is not the issue, the issue is whether a future action actually happens.

Chairman Getman responded that the Commission would need to decide whether it was reasonably foreseeable.

Ms. Gnekow stated that the question was whether it is reasonable for the law to expect Councilmember Galligan to decide whether a material financial effect was reasonably foreseeable, if the Commission could not decide whether it was reasonably foreseeable.

Commissioner Scott noted that a Council member is in a different position than the Commission because they only have to decide based on their set of facts, and that she would be inclined to give more leeway to the individual who made that determination. She explained that the Commission's decision would be based on a higher standard.

Mr. Krausse responded that the eight-step process can be applied by the Commission for each set of facts, and noted that every case differs.

Commissioner Scott argued that adding a smaller test for materiality makes the process more complicated.

Commissioner Swanson stated that she would rather issue an advice letter, based on the facts before them.

Mr. Krausse explained that it began as an advice letter. The benefit of doing an opinion now, he stated, was that it could give staff something to refer to for future similar cases.

Chairman Getman clarified that the advice letters have no precedential effect. She noted that staff was split on how to interpret the statute in this case because there are two different ways to view this situation, and that the Commission needed to make that interpretation.

Commissioner Deaver stated that it was a very difficult decision, but that he thought it would be appropriate to grant Councilmember Galligan the right to vote providing that it is made quite clear at the beginning of the opinion that it only apply to this specific set of facts, and providing that the Commission follow up later.

Commissioner Scott questioned how the Commission could follow up, and noted that if the Commission found out later that Councilmember Galligan's participation did make a difference, it would be difficult to process an enforcement action when the Commission granted him the right to participate.

Commissioner Deaver responded that the Commission would be making the decision based on a certain set of facts, and that if, later, those facts were changed and a citizen files a complaint, an enforcement case could be pursued.

Commissioner Scott noted that if the loan is not paid off, through no fault of Mr. Galligan, it would not be actionable.

Mr. Krausse stated that if the loan is not paid off, there is no conflict because the bank does not lose any income.

Commissioner Scott stated her concern that the Commission should not be put in a position of having to check what may have happened afterwards.

Commissioner Deaver responded that the Commission does not have to check to see what happens afterwards because the public will let the Commission know.

Chairman Getman noted that if some material fact that Councilmember Galligan stated turns out to be false, or if an important fact has been omitted, then the advice would not apply. She added that Enforcement Division would not have prosecuted a case with this set of facts because it was not reasonably foreseeable at the time of the Council vote that Councilmember Galligan would have a conflict.

Mr. Krausse clarified that Enforcement Division would not prosecute unless they could prove that it was reasonably foreseeable.

Chairman Getman noted that the Commission is discussing whether to add a "reasonable person" standard.

Commission Swanson stated her concern that if the Commission determines that Councilmember Galligan does not have a conflict, it may still give an appearance of a conflict. She added that the Commission has a responsibility to represent the public and that she had not heard anything yet which would allow him to vote. If, as in this case, the decision involving whether to vote can go one way or the other, she stated that it would be safer not to vote, to avoid the appearance of a conflict.

Councilmember Galligan responded that he, too, was troubled by the potential for an appearance of a conflict. He pointed out that no member of the public had knowledge of his possible conflict prior to his coming forward to ask for help from the FPPC.

Chairman Getman noted that this case points out the need to revise the conflict of interest laws. She stated that if seven FPPC attorneys could not decide whether Councilmember Galligan had a conflict, it was unreasonable to expect Councilmember Galligan to make that decision. She added that if he does not vote because of concern over the appearance of a conflict, the public loses representation on important votes. Chairman Getman argued that when the public knows all the facts, and the financial interest is not a personal one, it would be better to err on the side of allowing the public official to vote.

Chairman Getman made a two part motion, the first part moving that the Commission agree that the correct interpretation of Section 87103 is the one that staff calls “simple causation,” which states that if it is reasonably foreseeable that the decision will have a financial effect on an official’s economic interest, the official may have a conflict if the financial effect on the economic interest is material and if the financial effect on the economic interest is indistinguishable from its effect on the public generally. The second part of the motion was that the Commission find that, under these facts, it is not reasonably foreseeable that the decision would have a material financial effect on Councilmember Galligan’s economic interests, and he is not disqualified from voting for having a conflict of interest.

Commissioner Makel seconded the motion and reserved the right to write a concurring opinion.

Commissioner Scott requested that the motion be split.

Commissioner Swanson agreed that the motion should be split.

The Commission voted on the first motion involving interpretation of the statute. The motion passed unanimously.

Commissioner Swanson discussed the second motion, stating that she did not agree with the wording, “under these facts,” because this portion of the motion should stand on its own, without relevance to the first motion.

Chairman Getman clarified that the motion was not meant to stand on the first motion, but given the unusual factual situation before the Commission in the opinion, Councilmember Galligan does not have a disqualifying conflict of interest because it is not reasonably foreseeable that the decision will have a material financial effect on his economic interest. She further clarified that it is not reasonably foreseeable that it is a material financial effect because it is substantially likely that the loan would be paid off early under either scenario, or that the loan does not get paid off, in which case there is no conflict of interest.

Chairman Getman, Commissioner Makel, and Commissioner Deaver voted aye. Commissioner Scott and Commissioner Swanson voted nay. The motion carried.

Chairman Getman reported that staff will write the opinion for formal adoption at the June Commission meeting.

Commissioner Scott questioned whether the opinion should be written as an advice letter.

Chairman Getman stated that an advice letter would not be necessary since Councilmember Galligan now knows that the Commission is in favor of allowing him to vote, unless there is any permutation of the facts.

Commissioner Scott noted that the purpose of an opinion letter is to set precedent, and questioned whether this decision means that anytime the Commission makes a determination that someone's vote might not make a difference, there is no conflict.

Chairman Getman responded that the opinion was necessary for the first part of the motion regarding the statutory interpretation, but that opinions are always presented with a set of facts, not on hypothetical situations.

Commissioner Scott stated that she was very troubled by how the Commission decides when to issue an opinion, because Commission opinions set precedent for conflicts of interest.

Item #5. Proposed Delegation of Authority to the Executive Director regarding Collection of Outstanding Fines and Discharge of Uncollectible Fines.

Chairman Getman motioned that the Commission approve the delegation of authority. Commissioner Makel seconded the motion. There being no objection, the motion carried.

Chairman Getman adjourned the meeting for a break at 11:00 a.m. The meeting reconvened at 11:10 a.m.

Item #6. Progress report on Section 87103's "reasonably foreseeable material financial effect" standard (Phase 2 Project 'C').

Staff Counsel John Vergelli introduced this project, noting that it means different things to different people. He stated that the League of Cities, City Attorneys Department and the California Association of Realtors have been very active in the process.

Mr. Vergelli noted that there does seem to be a consensus that there is difficulty for public officials to make the predictions the statute requires, because the official must decide, before the fact, whether it is reasonably foreseeable that the government decision will have a material financial effect on the official's economic interests.

Mr. Vergelli explained that there are two questions framing the project: (1) What constitutes a reasonable effort by a public official to comply with this law (sometimes called the "standard of care"), and (2) To what extent, if any, should making that reasonable effort or complying with that standard of care shield the public official from after-the-fact second guessing, including prosecution?

Mr. Vergelli noted that there a number of proposals being discussed which will be presented to the Commission at a future date. He added that there are two issues staff is requesting guidance on at this time.

Mr. Vergelli explained that the first issue is whether it is productive to continue work on this project as a stand-alone project. He compared this project with other projects, noting that it is different because it does not improve provisions within the conflict of interest regulations, but instead adds a new analysis. He suggested that, if the Phase 2 program successfully improves the regulations, this new analysis will not be necessary.

Mr. Vergelli added that the same argument would apply to the question of whether the Commission should establish, as a matter of law, that there is a definite time frame in which to look for material financial effects, and if something is going to occur after that time frame it would not be considered a conflict of interest.

The second issue presented by Mr. Vergelli for Commission guidance involved the reasonable person standard. He explained that under this standard, it is not the subjective understanding or the subjective intentions of the decision-maker that should be used when deciding whether it is reasonably foreseeable that the government decision will have a material financial effect, but rather, whether a reasonable person in those positions knew or should know whether there is a material financial effect. He reported that staff had received a proposal from the California Association of Realtors, and a draft from the Los Angeles City Attorneys Office, incorporating the notion of a reasonable person standard.

There was no public comment on this issue.

There was no objection from the Commission to accept staff recommendation to postpone work on this project while waiting to see how the regulatory program works this year.

There was no objection to endorsing, at least provisionally, a reasonable person standard.

Mr. Vergelli explained that the decision would give a tentative, if not ultimately permanent, endorsement of the reasonable person standard. He noted that staff has been working with that understanding for many years, but that it had not been the subject of a Commission opinion or regulation, and therefore had not been defined. He stated that it would be important to define it so it can be used as a foundation.

Item #7. Discussion of Phase 2 projects I, J, and K (“public generally” exception).

Project I - Public Generally Exception - Applicability to Particular Industries, Trades, or Professions.

Project J - Public Generally Exception - Rent Control Issues.

Project K - Public Generally Exception - Clarifying the Applicability of the “Significant Segment” Definitions to Various Kinds of Economic Interests.

Assistant General Counsel Luisa Menchaca gave an overall presentation of the three projects. She summarized the memo presented to the Commission, and noted that staff was not requesting that the Commission make specific decisions, but that staff was proposing one more Interested

Persons meeting on June 1st, 2000, encompassing the three projects and will include real property materiality and standard of care Phase 2 projects. Staff wanted to get more input from the regulated community regarding priorities or issues for these projects.

Ms. Menchaca discussed step seven of the analysis process, noting that it is known as the “public generally” exception, and stems from Government Code Section 87103. She explained that once steps one through six had been completed, and a conflict was found to exist, step seven determines whether the material financial effect on the public official is different from the material financial effect on the public generally. She noted that the risk of bias judgement was less when the financial effects of a decision fall broadly across the jurisdiction.

Ms. Menchaca stated that Regulation 18707 establishes two tests which determine whether the exception applies and discussed those tests. The first test involves determining whether a significant segment of the jurisdiction or district represented by the public official is affected. She noted that, historically, the Commission has looked at the diversity of the population and the number of people effected. The second test determines whether the effect is substantially the same for the persons effected in that segment.

Ms. Menchaca noted that some examples of significant segments involved in the first test would be the significant segment as it is analyzed as a business entity. Fifty percent of all businesses would have to be effected in a similar manner before the “public generally” exception would apply. She added that staff would like to better match the regulation to the enumerated economic interests of Government Code Section 87103, particularly in the case of Project K.

Ms. Menchaca explained that a public official may be able to participate if ten percent of the property owners in the jurisdiction or the population are affected in a similar manner. She noted that the interests that are usually triggered when an individual has an economic interest arise out of real property interests. She added that the relationships between the Projects are beginning to merge as staff studies the Projects, and that, as a result, staff is looking for better ways to match or refine the rules.

The significant segment rule does allow for exceptional circumstances, Ms. Menchaca explained. The Commission has found that there have been some circumstances where a bias did not exist or a strong public policy argument allowed for an exception, and noted that staff does not apply that exception often.

Ms. Menchaca explained that Regulation 18707 is a “fix-it” regulation, and that staff is taking public comment and staff comment to find better ways to refine the regulation. She gave the example of business entities, noting the need for clarification of whether the business test or the individual owner test should be applied when the economic interest is the ownership of a business.

Ms. Menchaca noted that staff would also like to develop language to determine when the “public generally” exception should apply, when a governmental entity is the disqualifying economic interest. She reported that if the governmental entity is a disqualifying economic

interest, but the benefit flows generally to the public then there is no conflict. Ms. Menchaca added that, while this has been done through advice letters, it is not in the regulation.

The Commission has several “special purpose” regulations, added over time, that are based on legislation or legislative policy, Ms. Menchaca reported. One regulation allows for individuals in landowner voter districts to participate even though the number of property owners may be very small. The Boards are established by law, and they have particular mandates, and the right to their participation is based in the legislation. Another special purpose regulation allows individuals who are appointed to a Board or Commission to represent the interest that actually triggers the conflict. She explained that there is usually an ordinance or statute that creates the body and gives it its mission, and that officials serving on those Boards or Commissions are usually appointed because of their expertise. Another example of a special purpose regulation pertains to participation if the official’s sources of income are the result of a retail business, wherein the businessperson has a lot of business and the official would have difficulty making an exception determination for every case. Other special purpose regulations that the Commission has established based on policy considerations include one which would allow public officials to participate when their principal residence is indirectly affected and it is in a small jurisdiction; one which allows participation when the economic interest is an industry, trade or profession that is a predominant industry within that jurisdiction; and a regulation that deals with emergencies.

Ms. Menchaca noted that general comments receive by staff express concern that an elected official is disenfranchised by the Commission’s approach to “public generally,” because the official is not able to speak for the constituents on issues. She suggested that the Commission look for another approach which would allow participation, or even voting. Other comments include the suggestion that disqualification may not be necessary because disclosure would be enough, and the comment that there is nothing wrong with the current existing regulations.

The scope of the project, Ms. Menchaca added, must be within the confines of existing statutes.

Ms. Menchaca stated that the major issues involve business, trade and profession issues, and that under existing Regulation 18707, a single business, trade or profession does not constitute a significant segment, although there may be circumstances where a single business, trade or profession could constitute a significant segment. Under the Regulation, a single business, trade or profession can be a predominant industry, but this has been interpreted by staff very narrowly, to accommodate “company town” situations. This issue needs to be explored to determine whether staff should broaden the interpretation or whether the regulation should be amended.

Ms. Menchaca asked that the Commission decide whether staff should look at the two issues, and if the Commission determines that the staff should look at the two issues, she noted that staff would need to revisit the *Ferraro* and *Overstreet* opinions and develop policy issues for the Commission to consider. If the Commission does not want staff to look at these issues, she added, staff believed that there are not statewide concerns, but there are discrete issues with respect to realtors and landlords, which would not warrant an overhaul of the regulations.

Another major issue, Ms. Menchaca continued, related to landlord/tenant issues, and staff has received a lot of public comment, particularly from the San Francisco area, relating to the equitable effect of the rules as it pertains to landlords and tenants. Under the Commission's opinions, she explained, the tenant would be able to participate under the "public generally" exception, but the landlord may not. Ms. Menchaca requested that, if the Commission chooses to continue these policies, staff be allowed to examine specifying the policies in a regulation. Public comment on this issue, she reported, included that the Commission should do nothing and maintain the status quo, and comments that the Commission should treat landlords and tenants the same. Ms. Menchaca noted that the Greater San Francisco Association of Realtors requested that the Commission consider a specific proposal to amend one of the regulations to allow participation in decisions involving rent control.

Ms. Menchaca stated that there were many inter-related issues in Projects I, J, and K, and that staff requested guidance on how to proceed.

Karen Crommie, a small property owner from San Francisco, reported that each year, a tenant's organization proposes legislation or ballot measures that tighten rent control and last year, allowed only a 1.7 percent rent increase and caused costs of an eviction to rise to twenty to thirty thousand dollars. The ballot measures always pass, she stated, because sixty-eight percent of the voters are renters, and the only avenue left for the property owners would be to request change through the Board of Supervisors. Ms. Crommie noted that three or four of the supervisors own rental property and routinely recuse themselves. She asked that the Commission allow all of the supervisors to vote, and require full disclosure of their economic interests.

Jim Fabris, Executive Director of the San Francisco Association of Realtors, stated that the conflicts of interest definitions result in the exclusion of rental property owners in the San Francisco area from the political process as it relates to rent control legislation. He voiced his concern that only supervisors who are tenants or owners of single family homes are allowed to vote on rent control legislation. Mr. Fabris stated that the result has been the systematic and unconstitutional destruction of the rights of rental property owners. He noted that rental property owners are restricted from occupying the property they own, or providing for the occupancy of family members. The result, he stated, has been the disenfranchisement of rental property owners.

Mr. Fabris voiced his support of the San Francisco Association of Realtors' suggestion that both tenants and property owners be included in discussions and votes on rental property issues in order to assure that public policy related to rental housing is based on balanced discussion of issues. If this is not done, he suggested, the only other solution would be to refer all matters in which elected officials have an economic interest to the general public for resolution, which would be a travesty for local government. He further requested that interested persons be allowed to work with Commission staff to craft a solution to the issue.

Marilyn Kosentino, a small property owner from San Francisco, reported that she has owned small property in the area since 1985. She stated that she feels totally disenfranchised because

the supervisors who could represent her recuse themselves. She noted that she has to pay market rate for goods, but cannot charge market rate for her rental properties, and questions whether it should be called a business. Ms. Kosentino questioned why the rules provide that an official with an economic interest cannot participate, but a tenant with an economic interest can participate. She gave an example, illustrating that the tenant in one of her rental properties is saving about eleven thousand dollars a year due to rent control.

Polly Marshall, Tenant Commissioner on the San Francisco Rent Board, speaking on behalf of the Affordable Housing Alliance, stated that a recent change in the San Francisco law added smaller property owners into the conflict law for decisions involving the Board of Supervisors. The City Attorney in San Francisco, she noted, has been conservatively interpreting the conflict of interest rules, not following the *Ferraro* decision, and has left an interpretation that no landlords can vote on the Board of Supervisors. She disagreed with that interpretation, noting that an owner of four or fewer units can vote.

Ms. Marshall added that two-thirds of the population of San Francisco are tenants, therefore tenants are the “public generally.” She charged that landlords own their rental properties as a business, and under the FPPC rules, not enough people own rental properties to qualify them for the “public generally” exception, unless they own four or less units.

Ms. Marshall questioned why the Commission should consider a special exception allowing substantial landlords to participate on rent control issues, charging that it would completely defeat the fundamental concept of the conflict of interest laws. She stated that it is right for large landlords to be disqualified from voting on issues involving rent control, and added that the reason for rent control was because of the disparity in the economic power of tenants and landlords. She explained that landlords have a substantial business interest, different from the rest of the public, while tenants are obtaining a necessity of life, like everyone else. She opposed the proposal that any decision effecting rent control or landlord/tenant relations should fall under the “public generally” exception, pointing out that it would be illogical for the owner of a five million dollar piece of rental property to be considered a member of the “public generally.” Ms. Marshall stated that the notion goes so far that it would violate the “public generally” statute.

Ms. Marshall stated that all residents of a jurisdiction are affected by a rates and assessments as rate payers. Rent control affects large landlords as a collector of rent, she added, and compared it to an oil company claiming the same interest in the price of gasoline as a car driver.

Ms. Marshall asked the Commission why they would consider making this special exception, questioning whether it was because there is an unprecedented housing crisis in California, or because it is a hot political issue. She stated that she saw this as a special interest proposal and encouraged the Commission not to change the current rule, unless it was to clarify that the smaller property owners can vote.

Ms. Marshall stated that many other people would have been at the Commission meeting to voice their objections to this proposal, but they did not receive notice of the meeting in time to arrange to be there.

Stan Wieg, representing the California Association of Realtors, supported the staff recommendation that the discussion be continued. He suggested that the Commission review its previous decisions, not considering prior advice letters or decisions, but considering the statute. He complimented the staff on their work and offered continuing cooperation on this project.

Donald Gibbs, a citizen from San Francisco, drew a distinction between properties and units, noting that property requires a property tax payment, and units refers to a rentable section of a piece of property.

Mr. Gibbs stated that he could not afford to own a home in San Francisco, but noted that he did have five one-bedroom units, and questioned allowing a public official with four units to participate and vote, but not a public official with five units. He suggested that the Commission not get bogged down, and instead look at the broadest possible picture. The answer to the rent control issue in San Francisco, he argued, is not less democracy, but the answer is to bring in the creativity of as many supervisors as possible on every issue, including housing, and let full disclosure be the litmus test for the voters.

David Crommie, from San Francisco, stated that his impression was that some of the members of the Board of Supervisors who recuse themselves have very little property and are using that as an excuse not to vote.

Mr. Crommie pointed out that in November of 2000, the Board of Supervisors will be elected by district, and each district will have only one member on that Board. If that member was excluded because of a conflict, he added, it would exclude an entire district from representation.

Ms. Menchaca noted that some of the tenant groups did not receive the Commission meeting notice until a few days before the meeting and that there may be more public comment. She assured the Commission that staff would get the word out to maximize the public comment for the June 1st, 2000 meeting.

Chairman Getman explained that the staff is trying to get the word out, and asked the public for names and addresses so that the information can be distributed to as many people as possible.

Atlee Moody, owner and resident of a two-unit residence in San Francisco, explained that he feels so disenfranchised from the process that he does not want to vote anymore. He stated that members of the Board of Supervisors recuse themselves, and the rent control issues are decided by tenants. The landlords, he continued, probably represent about ten percent of the people of San Francisco, and they want to be heard. He did not consider his rental as a business, but rather as a hedge against retirement. He pointed out that it is very difficult to sell the building, because the tenant cannot be evicted to sell the building. Mr. Moody stated that as long as there is real disclosure, and there is no very direct interest, then the public officials should be allowed to do their job.

Mr. Gibbs noted that he loses about sixty-thousand dollars a year because rent control laws do not allow him to charge market value for the rental of his units, and asked the Commission who has the greater material interest, the tenants who receive the monetary benefits of rent control, or the landlords who cannot get market value for their rental units because of rent control.

A member of the audience stated that, out of the eleven supervisors on the San Francisco Board of Supervisors, Supervisor Leslie Katz owned a single-family dwelling and now rents a room to her roommate and recuses herself from voting as an owner of rental property; Supervisor Barbara Kaufman, President of the Board of Supervisors, owned and lived in a six-unit residential building with her husband, and has been recused as an owner of rental property; Supervisor Gavin Newsome owned a single-family dwelling and has a minority interest in a partnership which owns rental property; and Supervisor Leland Yee owns a single family dwelling and a four-unit rental property. The City Attorney, he stated, has indicated to the Supervisors that they could subject themselves to being sued if they vote on a measure, or even participate in discussions of that measure, if they would otherwise have a conflict of interest.

Chairman Getman asked the Commission to postpone much of this decision and have one more interested persons' meeting. There was no objection from the Commission.

Commissioner Makel asked for clarification of the number of units which would require disqualification.

Ms. Menchaca responded that Supervisor Katz would not have a disqualifying conflict, Supervisor Kaufman would have a disqualifying conflict, Supervisor Yee would have a disqualifying conflict. She could not say whether Supervisor Newsome had a disqualifying conflict without more information.

Commissioner Deaver suggested that the Commission consider units, not parcels in the regulation.

Commissioner Makel stated her concern that one side of the debate was silent.

Commissioner Deaver noted that there is a basic principle in the common law of this country that both sides of an issue get a chance to be heard, and added that it was not happening in the rent control issues.

Chairman Getman reminded everyone that the Interested Persons' Meeting would be held on June 1st, 2000, at 1:00 through 4:00, at the Commission Headquarters, 428 J Street, Sacramento, Suite 800. She added that the Commission meeting will be the next day, but the vote on this issue will not take place at that meeting. She also noted that the McPherson Commission hearing will be held at the Legislature Monday, May 10th, 2000, at 9:30 a.m., and that they will also be looking at conflict of interest issues and whether disqualification should be replaced by disclosure.

Item #8. Legislative Report.

1. AB 746 (Papan): Definition of Foreign Principal.

Government Relations Director Mark Krausse presented the recommendation to ratify the amendment to AB 746 (Papan), resolving the issue of the constitutionality of the Commission's definition of "foreign principal."

Chairman Getman stated that she and Commissioner Deaver agreed that the bill was a good idea and recommended that the full Commission ratify the amendments.

There being no objection, the amendments were ratified.

2. SB 2076 (Polanco): Forms Simplification Project. .

Staff Counsel Scott Tocher presented the proposed amendments to SB2076 (Polanco), reporting that staff had met with Senator Polanco's staff, and the author requested that two aspects of the legislation which might prevent the proposal from moving forward, be removed from the proposal. The first involved quarterly filing, and the perception that the increased number of filings being generated as a result of online filing, as well as the difficulty of online filing, make this portion of the amendment difficult to approve. The second part of the legislation deals with the addition of noting expenditure dates on certain filings. With those two aspects of the proposal removed, Mr. Tocher noted, and perhaps considered at a different time, the legislation would stand a significantly better chance of passage. He explained that the following provisions would remain in the legislation:

1. Provisions that signature gatherer names would no longer be collected as a result of a recent Supreme Court decision.
2. Changing the amount of the requirement for payments to subvendors from one hundred dollars to five hundred dollars.
3. Meeting a certain threshold for asset reporting.
4. Technical changes to the forms and statutes which accomplish simplification of reporting of information and expenditures relating to travel.
5. The forms changes and filing changes with regard to simplifying loan reporting.
6. The changes to the statement of intention for local filers, making all of their filings go to the local filing officer and not to the Secretary of State.
7. Changes to the statement of organization, changes in the statutes and codes, and providing for twenty-four hour amendment filing.

Chairman Getman asked the Commission whether there was objection to having the legislation move forward without the quarterly filing and expense reporting pieces in it. The choices, she explained, are to either have it move forward without those pieces, or withdraw Commission sponsorship and ask that the bill be withheld until perhaps next year, in its current form.

Commissioner Makel asked for clarification of the expenditure date issue.

Mr. Tocher responded that the expenditure dates are certain dates with regard to subvendor payments that committees may make. Currently, he explained, there is no requirement that the actual date of the writing of the check be reported. This legislation would make it a requirement. He added that there is a concern that it would add a tremendous burden in terms of the way the bookkeeping is done.

Technical Assistance Division Chief Carla Wardlow reported that currently expenditure dates are not required at all unless the payment is a contribution or an independent expenditure to actually support or oppose a candidate or a ballot measure. Adding the expenditure dates would increase the amount of paper which has to be filled out, she noted, because each payment would have to be reported separately. She stated that most states and federal reporting require those dates.

Chairman Getman noted that it would make it easier to track how the money was spent.

Commissioner Makel questioned why the quarterly filing was a problem in the legislation.

Chairman Getman responded that, while it is much more simple, for some candidates it requires a greater number of reports during a year.

Mr. Tocher reported that the quarterly filing requirement has a delayed effective date of June, 2002, but that there is a low degree of certainty that all of the problems with online filing will be resolved by then.

Commissioner Deaver suggested that the Commission support the bill, and ask the Legislature to extend the effective date of quarterly filing if the online filing system is not yet ready.

Mr. Tocher stated that he had suggested extending the date of the quarterly filing proposal beyond June, 2002, but was told that further extension would mean the proposal would wait for a future legislative session.

Chairman Getman stated that Senator Polanco's staff believe that if the two items remain in the legislation, it will not pass out of committee.

Mr. Tocher assured the Commission that the removal of the two items from the legislation would not effect the other items in the legislation.

Chairman Getman stated that the argument against removing the two items from the legislation would be that there is a sense that the law changes so often that it is difficult to comply with it. If the Commission does not wish to remove the two items, she explained, it might be better to pull the whole bill and then resubmit later when it can go through in its entirety. If part of the bill is approved now, but that part does not address the core of what the Commission is trying to accomplish, it might not make sense to push any of the bill through now.

Chairman Getman noted that another option would be to direct staff to push for approval of the entire legislation.

Commissioner Deaver stated that the Commission should give the staff some flexibility.

Mr. Krausse stated that the author's office is strongly recommending that the quarterly filing be taken out.

Chairman Getman suggested that the Commission agree to remove the quarterly filing and expenditure date portions of the bill if, without those two items, the bill would not pass.

Jason Connie, from Nielsen-Merksamer, emphasized that it is an important constitutional issue of whether subvendor signatures have to be reported at all. He noted that it is an unfair situation, with some subvendors reporting, and others not reporting. The legislative action is very important so that there is fairness in the community of reporting.

Chairman Getman agreed that it was an important issue, and that it needed to be resolved.

Items #9, #10, #11, #12, #13, #14, #15, #16

There being no objection, the following items were approved on the consent calendar:

9. *In the Matter of Christopher Warner, FPPC No. 99/811.*
10. *In the Matter of Alejandro Padilla, FPPC No. 99/788.*
11. *In the Matter of Bruce Roberson, FPPC No. 99/797.*
12. *In the Matter of Carolyn A. Roddy, FPPC No. 99/180.*
13. *In the Matter of Sacramento County Deputy Sheriffs' Association PAC, and Mark M. Iwasa, Treasurer, FPPC No. 99/90.*
14. *In the Matter of California Association of Drinking Driver Treatment Programs and Michael Wood, FPPC No. 99/814.*
15. *In the Matter of Essam Khashoggi, FPPC No. 99/370.*
16. *In the Matter of Todd Keegan, FPPC No. 96/662.*

Item #17. In the Matter of Unlimited Construction and Paul Litscher, FPPC No. 99/273 (Default Decision and Order).

Chairman Getman reported that Enforcement Division requested that this item be taken off of the May agenda and placed on the June agenda.

Item #18. Litigation Report.

There being no objection, this item was taken under submission.

Item #19. Executive Director's Report.

There being no objection, this item was taken under submission.

The meeting adjourned at 12:40 p.m.

Dated: June 2, 2000

Respectfully submitted,

Sandra A. Johnson
Executive Secretary

Approved by:

Chairman Getman